

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 24281-1-III

Respondent,

Division Three

v.

UNPUBLISHED OPINION

PERRY T. ASHELMAN,

Appellant.

BROWN, J.—While confined in Jail, Perry Tron Ashelman allegedly splashed urine onto the pants and shoes of Spokane County Corrections Officer Shaun Campbell. Mr. Ashelman was charged and convicted of custodial assault. Appealing, Mr. Ashelman contends evidence insufficiency and offender score error. We affirm.

FACTS

Because Mr. Ashelman challenges evidence sufficiency, the trial testimony is summarized most favorably for the State. In March 2004, Corrections Officer Shaun Campbell, in uniform, was making regular rounds at the Spokane County jail. As

Officer Campbell removed a magnetic strip covering the cell window, Mr. Ashelman threw urine under the door onto Officer Campbell's shoes and pants. Officer Campbell testified Mr. Ashelman stated, "I got you, bitch. Don't worry. It's only piss." Report of Proceedings (RP) at 37. Officer Campbell's pants and the two by three foot wet spot on the floor were viewed by her partner, Officer Darren Dinwoodie and Spokane County Deputy Sheriff Michael Drapeau. Officer Campbell could not remember seeing Mr. Ashelman when she peeled the strip back.

Mr. Ashelman was charged with and convicted of custodial assault. At sentencing, Mr. Ashelman argued his four prior juvenile convictions should be considered one offense for purposes of calculating his offender score, not two. The trial court disagreed. Mr. Ashelman appealed.

ANALYSIS

A. Evidence Sufficiency

The issue is whether sufficient evidence supports Mr. Ashelman's conviction for custodial assault.

We review evidence sufficiency challenges most favorably to the State. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We consider the State's evidence true together with all reasonable inferences. *Id.* We defer to the trier of fact and will affirm where the essential elements of the crime can be found beyond a reasonable doubt. *State v. Walton*, 64 Wn. App. 410, 415, 824 P.2d 533 (1992). Circumstantial evidence and direct evidence are equally reliable and sufficient to support a conviction. *State v. Delmarter*,

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94 Wn.2d 634, 638, 618 P.2d 99 (1980). “Circumstantial evidence alone will support a criminal conviction.” *State v. Bauman*, 77 Wn.2d 938, 942, 468 P.2d 684 (1970; *State v. Bernson*, 40 Wn. App. 729, 733, 700 P.2d 758 (1985).

A person commits custodial assault if he or she assaults a staff member of an adult corrections institution who is performing official duties. RCW 9A.36.100(1)(b). Although knowledge is not an element, the trial court, without objection, injected knowledge into the elements instruction. See *State v. Brown*, 140 Wn.2d 456, 470, 998 P.2 321 (2000) (knowledge victim was law officer not an implied element of similar crime of third degree assault under RCW 9A.36.031(1)(g)). Under the “law of the case” doctrine, the State assumed any burden of proving an otherwise unnecessary offense element by doing so. *State v. Willis*, 153 Wn.2d 366, 374-75, 103 P.3d 1213 (2005).

Mr. Ashelman contends the jury instructions as drafted required the State to prove he knew that Officer Campbell, specifically, was a staff member performing her official duties at the time of the assault and that the State failed in its burden.

Jury instructions are reviewed de novo. *State v. Pirtle*, 127 Wn.2d 628, 656, 904 P.2d 245 (1995), *cert. denied*, 518 U.S. 1026, 116 S. Ct. 2568, 135 L. Ed. 2d 1084 (1996). Jury instructions should be read as a whole in the context of the other instructions given. *State v. Brown*, 132 Wn.2d 529, 605, 940 P.2d 546 (1997), *cert. denied*, 523 U.S. 1007, 118 S. Ct. 1192, 140 L. Ed. 2d 322 (1998).

The “to convict” instruction read to the jury partly provided:

To convict the defendant of the crime of custodial assault, each of the following elements of the crime must be proved beyond a reasonable

doubt:

- (1) That on or about the 12th day of March, 2004, the defendant assaulted Shaun Campbell;
- (2) That, at the time of the assault, Shaun Campbell was a staff member at a local detention facility;
- (3) That, at the time of the assault, Shaun Campbell was performing official duties; and
- (4) That, at the time of the assault, the defendant knew that Shaun Campbell was a staff member at a local detention facility, who was performing official duties; and;
- (5) That the acts occurred in the State of Washington.

Clerk's Papers at 37.

Reading this instruction as a whole, subparagraph (4) was inserted for the purposes of connecting the knowledge element to subparagraphs (2) and (3). It did not impose upon the State a burden of proving that Mr. Ashelman knew that Shaun Campbell, specifically, was the staff member performing official duties. The defense did not argue otherwise:

To be guilty of custodial assault, among the other issues that I have talked about that need to be resolved, in the State's favor, the prosecutor also has to prove *that Mr. Ashelman knew that this was a police officer outside. A corrections officer. . . .*

RP at 90-91. Viewed in this fashion, knowledge of Officer Campbell's identity was not an element of the offense. Even assuming the additional knowledge requirement, the result is the same.

Viewing the evidence most favorably to the State, the evidence showed Mr. Ashelman's floor was a maximum security floor and corrections officers made regular rounds to check on the inmates every 30 minutes. Corrections officers feed the inmates and move the inmates to the

showers and day rooms. The urine splashed under the doorway was not accidental. Mr. Ashelman's statement immediately after the incident showed the requisite knowledge. Given all, the jury could infer Mr. Ashelman knew what he was doing to Officer Campbell, a corrections officer performing her duties. Accordingly, the evidence is sufficient to sustain Mr. Ashelman's conviction.

B. Additional Grounds – Offender Score

The issue is whether the trial court erred in calculating Mr. Ashelman's offender score. Mr. Ashelman contends his four prior juvenile convictions sentenced on the same date should have been treated as one offense under the Sentencing Reform Act (SRA) of 1981 RCW 9.94A, instead of receiving separate treatment.

We review offender score calculations de novo. *State v. Roche*, 75 Wn. App. 500, 513, 878 P.2d 497 (1994). Under the SRA, prior convictions are used to determine an offender score, which is then used to determine the applicable standard sentence range. *State v. Ammons*, 105 Wn.2d 175, 187, 713 P.2d 719, 718 P.2d 796 (1986). "A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed." RCW 9.94A.525(1).

RCW 9.94A.525(5) provides the general rule that all prior convictions should be calculated separately except in limited circumstances, including prior offenses found to be the same criminal conduct and those cases in which the sentencing court finds concurrent adult and consecutive juvenile offenses encompass the same criminal conduct. Mr. Ashelman's offenses do not fall within these exceptions. Moreover, Mr. Ashelman's four juvenile convictions,

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although sentenced on the same date, did not constitute the same criminal conduct as they occurred on separate dates and consisted of unconnected charges. Mr. Ashelman does not suggest the victims in the four charges are the same. Consequently, the trial court correctly calculated the offender score.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Brown, J.

WE CONCUR:

Kato, J.

Kulik, J.